

Patents

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gerald H. Ablan )  
Serial No.: 09/644,411 ) Art Unit: 3621  
Filed: August 23, 2000 ) Examiner: C. Hewitt II  
For: Auction Management System )

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**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

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Applicant respectfully requests pre-appellate review of the Final Rejection dated November 9, 2006. A copy of the pending claims is appended for ease of review. The Final Rejection is based on 35 U.S.C. § 103. Applicant contends that the rejections contain two clear errors: (1) the cited references fail to teach or suggest a number of the elements of the claimed invention, and the examiner's contentions that certain features are shown or suggested in the certain references are inconsistent with content of those references; and (2) the examiner has failed to give due consideration to the objective evidence of non-obviousness submitted by Applicant establishing the considerable commercial success of the claimed invention.

**I. Traversal of Alleged *Prima Facie* Case of Obviousness**

Claims 67-69, 71-75, 77, 79-82 and 85 stand rejected based on Rackson et al., U.S. Pat. No. 6,415,270 ("Rackson") in view of Conklin et al., U.S. Pat. No. 6,141,653 ("Conklin"). Claims 70, 76, 78, 83 and 84 stand rejected based on Rackson and Conklin in further view of Robinson et al., U.S. Pat. No. 5,915,022 ("Robinson").

The Final Rejection fails to establish a *prima facie* case of obviousness for the claimed invention because the prior art references, individually or when combined, do not teach or suggest all the claimed elements. Claims 73-81 are directed to an electronic auction monitoring report that includes alterable tracking fields identifying the status of post-sale activities associated with the sale, and claims 82-85 are directed to a menu-driven utility for creating and storing auction submissions. Claim 67-72 are combination claims that recite both of these features.

**A. Menu-Driven Utility for Creating and Storing Auction Submissions**

Paragraph 2 and the first portion of Paragraph 4 (pages 5, 6) of the Final Rejection contend that Rackson in combination with Conklin suggests the menu-driven utility for creating and storing auction submissions as recited in claim 82 and the upper portion of claim 67. However, neither Rackson nor Conklin describe or suggest a menu-driven utility for creating and storing auction submissions. Rackson describes a multi-auction service that is primarily concerned with the determination of an optimal bid price for an item that the user intends to purchase or sell at auction. See Rackson at col. 8, lines 6-17. The only description in Rackson that could be construed as relevant to a system for creating auction submissions states:

The seller or the multi-auction service may specify the selling parameters of the offer to include, but are not limited to, some or all of the following: starting date and time; closing date and time; reserve price; a successful bid range; quantity of items; item description which may comprise in addition to text, graphic representation such as image file, photograph; audio file; video clip or other content that provides a representation of the item. These parameters may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service.

Rackson at col. 9, lines 24-35 (see also col. 3, lines 16-33). This passage merely states that the user may include the listed types of selling parameters in an auction submission. There is no description or suggestion in Rackson of a menu-driven utility for creating and storing auction submissions that includes "predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates" and the storage of the auction submissions in an "electronic auction submission library" as recited in claims 67 and 82. Conklin does not describe an auction management system and, therefore, has no description that could be considered relevant to a process or system for creating auction submissions. Accordingly, neither reference discloses or suggests the menu-driven utility for creating and storing auction submissions that includes "predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates" and the storage of the auction submissions in an "electronic auction submission library" as recited on claims 67 and 82

Claims 72 and 83-85 recite additional detail regarding the menu-driven utility for creating and storing auction submissions, including the creation and maintenance of electronic libraries containing reusable elements for creating auction submissions using the menu-driven utility. The reusable elements for creating auction submissions stored in the electronic libraries include inventory records, images of items, textual descriptions, and advertising templates. These claims further recite associated functionality for combining selected images, selected textual descriptions, and sets of auction parameters in a format defined by the selected advertisement template to create the auction submissions. Because neither Rackson nor Conklin address the use of a menu-driven utility for creating and storing auction submissions, these references, individually or in combination, fail to disclose or suggest these additional features of the claimed invention.

#### **B. Auction Monitoring Report with Tracking Fields for Post-Sale Activities**

Paragraph 4 of the Final Rejection on the bottom of page 6 through page 7 contends that the combination of Rackson and Conklin suggests an electronic auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields that are alterable to indicate a completion status of post-sale activities, as recited in claim 73 and the lower portion of claim 67. The only auction monitoring report disclosed in Rackson is shown in figure 14 and described at col. 25, line 55 – col. 26, line 29. The display panel 500 in figure 14 shows auction monitoring information for an item (element 502) offered for sale at multiple auctions. The purpose of the panel 500 is to display the status of the multiple auctions, highlight the user's bid, and show the rules (element 510) used to compute a time and value for a suggested next bid (element 560). Thus, the panel 500 shown in figure 14 of Rackson does not show "a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission" as recited in claims 67 and 73, but instead shows information pertaining to a single item offered for sale at multiple auctions.

In addition, Rackson fails to disclose or suggest any type of alterable tracking fields for identifying the status of post-sale activities. The Final Rejection asserts that Conklin teaches the tracking fields at figures 8, 12 and 15a and contains an additional reference to figures 1i, 7, 8, 12 and 13 and col. 24, lines 18-41. This contention is plainly false, however, because Conklin does not disclose or suggest the elements for which it has been

cited. It should be noted that the detailed description in Conklin only describes the figures 1a through figure 5b, and therefore contains no detailed description of the cited figures 7, 8, 12, 13 or 15a, which, in any event, do not address an auction creation or management system. Rather, figures 1i and 7 are flow charts concerning the closing of a negotiation using a shared document, figure 8 is a flow chart regarding the shipping of ordered products, figure 12 shows a list of orders, figure 13 appears to be a form showing the status of an order, and figure 15 shows a payment approval form. Conklin at page 24, lines 18-41 merely describes figure 1i, which concerns the closing of a negotiation as memorialized in a shared document. Conklin therefore fails to disclose or suggest any type of consolidated auction monitoring report, and certainly does not disclose or suggest the use of tracking fields for monitoring the status of post-sale activities associated with close auctions. Accordingly, neither Rackson nor Conklin disclose or suggest an auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields that are alterable to indicate a completion status of its post-sale activities as recited in claims 73 and 67.

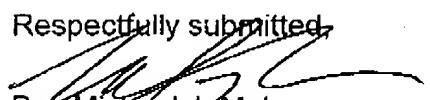
Claims 68-71 are directed to additional elements of the auction monitoring report and associated activities including the receipt of user input altering the view a tracking item to indicate completion of a post-sale activity (claims 68, 74), automatically performing a post-sale operation in accordance with settings data and altering an associated tracking item to indicate completion of a post-sale activity (claims 69, 75), automatically sending a purchase notification message as a type of post-sale operation (claims 70, 76), and automatically sending an auction feedback message as a type of post-sale operation (claims 71, 77), automatically creating and storing a billing record associated with a closed auction (claim 78), revisiting the auction sites to extract updated auction information in response to a user request for access to the auction monitoring report (claim 79), displaying each auction management record as a row displaying the information pertaining to its respective auction submission and the tracking fields are displayed as icons (claim 80), and including tracking fields in the auction monitoring report for purchaser notification, payment received, auction item shipped, and payment received (claim 81). Because neither Rackson nor Conklin address the use of tracking fields in an auction monitoring report, these references, individually or in combination, fail to disclose or suggest these additional features of the claimed invention.

Paragraph 5 of the Final Rejection further cites Robinson in the rejection of claims 70, 76, 78, 83 and 84 as allegedly showing a system that sends a bill or post-sale receipt to a purchaser. However, Robinson is directed to the use of encrypted digital receipts, and fails to disclose or suggest any type of auction management system. There is no teaching in Robinson of a menu-driven utility for creating and storing auction submissions or an auction monitoring report that displays a plurality of auction management records within a common view and includes tracking fields for indicating the status of post-sale activities. Accordingly, the combination Rackson and Conklin in further view of Robinson does not create a *prima facie* case of obviousness for any of claims 70, 76, 78, 83 and 84 because none of these references disclose or suggest a menu-driven utility for creating and storing auction submissions or an auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields for indicating the status of post-sale activities.

## II. Evidence Rebutting Alleged *Prima Facie* Case of Obviousness

Page 4 of the Final Rejection fails to give due consideration to the Declaration of Daris McCullough under 37 CFR § 1.132 establishing the considerable commercial success of the present invention. Mr. McCullough's Declaration documents the progressively increasing sales of Applicant and further states that, "[v]irtually all of Applicant's auction management system since inception of the company is claimed in the subject application, and Applicant's auction management system as described and claimed in the subject patent application is the only feature distinguishing it from other auction management system." Applicant has, therefore, established both a high degree of commercial success and a nexus between this success and the claimed invention. This evidence rebuts the *prima facie* case of obviousness allegedly established by the Official Action and must be given full consideration. MPEP §§ 716.03; 1504.03; Graham v. John Deere, 383 US 1 (1968); Litton System, Inc. v. Whirlpool Corp., 728 F.2d 1423 (Fed. Cir. 1984). Although the Final Rejection discusses the Declaration, it merely asserts the conclusion that the evidence is "not persuasive" with supporting rationale or analysis.

Respectfully submitted,

  
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